

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

IVAN LEE MATTHEWS, II,

Plaintiff,

v.

THE CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION,

Defendant.

Case No.: 1:25-cv-00580-CDB

FINDINGS AND RECOMMENDATIONS  
TO DENY IN FORMA PAUPERIS STATUS  
AND REQUIRE PREPAYMENT OF FEES

(Doc. 2)

**14-DAY OBJECTION PERIOD**

Clerk of the Court to Assign District Judge

Plaintiff Ivan Lee Matthews, II (“Plaintiff”) is proceeding pro se in this civil rights action pursuant to 42 U.S.C. section 1983.

**I. INTRODUCTION**

Plaintiff filed a complaint and a motion to proceed *in forma pauperis* in the Central District of California on May 5, 2025. (Docs. 1, 2). On May 16, 2025, the action was transferred to this Court because the allegations involve conduct that occurred at a facility in the Eastern District of California (*e.g.*, North Kern State Prison). (Docs. 4, 5).

Upon review of Plaintiff’s prisoner litigation history and his complaint, the Court finds that Plaintiff had at least three “strikes” prior to filing the action and that Plaintiff was not in imminent danger of serious harm at the time he filed the action. Therefore, the Court recommends that Plaintiff’s motion to proceed *in forma pauperis* (“IFP”) (Doc. 2) be denied under 28 U.S.C. §

1915(g) and that Plaintiff be required to pay the \$405.00 filing fee in full to proceed with the action.

## 2 **II. THREE-STRIKES PROVISION OF 28 U.S.C. § 1915**

3 Under 28 U.S.C. section 1915, a prisoner may under certain circumstances proceed with the  
4 commencement of a civil rights suit without the prepayment of court fees. Relevant here, the statute  
5 provides that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner  
6 has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action  
7 or appeal in a court of the United States that was dismissed on the grounds that it is frivolous,  
8 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under  
9 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

10 This section is commonly referred to as the “three strikes” provision. *Andrews v. King*, 398  
11 F.3d 1113, 1116 n.1 (9th Cir. 2005) (“*King*”). “Pursuant to § 1915(g), a prisoner with three strikes  
12 or more cannot proceed IFP.” (*Id.*); see *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007)  
13 (“*Cervantes*”) (holding that “[p]risoners who have repeatedly brought unsuccessful suits may  
14 entirely be barred from IFP status under the three strikes rule”). The objective of the Prison  
15 Litigation Reform Act is to further “the congressional goal of reducing frivolous prisoner litigation  
16 in federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).

17 Not all dismissed cases qualify as a strike under section 1915(g). *King*, 398 F.3d at 1121.  
18 In determining whether a case counts as a “strike,” “the reviewing court looks to the dismissing  
19 court's action and the reasons underlying it.” *Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013).  
20 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which were dismissed  
21 on the ground that they were frivolous, malicious, or failed to state a claim.” *King*, 398 F.3d at  
22 1116 n.1 (internal quotations omitted).

## 23 **III. DISCUSSION**

24 The Court takes judicial notice<sup>1</sup> of three prior lawsuits filed by Plaintiff that were dismissed  
25 for failure to state a claim:

- 26 1. *Matthew v. Williams*, No. 3:19-cv-00253-MMD-WGC, 2020 WL 1676786, at \*2 (D. Nev.

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27 <sup>1</sup> The Court may take judicial notice of court records. *United States v. Wilson*, 631 F.2d  
28 118, 119 (9th Cir. 1980).

1 Apr. 3, 2020) (dismissed for failure to state a claim on April 3, 2020)

2 2. *Matthews v. Puckett*, No. 13-cv-02760-JD, 2015 WL 7251930, at \*3 (N.D. Cal. Nov. 17,  
3 2015) (dismissed for failure to state a claim on November 17, 2015)

4 3. *Matthews v. Pistone*, No. C 04-3712 JSW (PR), 2005 WL 2671386, at \*3 (N.D. Cal. Oct.  
5 19, 2005) (dismissed for failure to state a claim on October 19, 2005)

6 A dismissal for a failure to state a claim is a strike for purposes of 28 U.S.C. § 1915(g).  
7 *Moore v. Maricopa Cnty. Sheriff's Office*, 657 F.3d 890, 893-94 (9th Cir. 2011). Because Plaintiff  
8 has incurred at least three prior strikes, and each was dismissed prior to the commencement of the  
9 current action on May 5, 2025, Plaintiff is subject to the section 1915(g) bar. Moreover, he is  
10 precluded from proceeding IFP in this action unless, at the time he filed his complaint, he was under  
11 imminent danger of serious physical injury. *See Cervantes*, 493 F.3d at 1052-53.

12 The Court has reviewed the complaint in this action and finds that Plaintiff's allegations do  
13 not meet the imminent danger exception. His conclusory pleading that he is "in immediate danger"  
14 (*see* Doc. 1 at 12, 13) is insufficient to show that he is in imminent danger of serious physical injury  
15 to defeat the three-strikes bar under Section 1915. *See Cervantes*, 493 F.3d at 1053; *see also*  
16 *Blackman v. Mjening*, No. 1:16-cv-01421-LJO-GSA-PC, 2016 WL 5815905, at \*1 (E.D. Cal. Oct.  
17 4, 2016) ("Imminent danger of serious physical injury must be a real, present threat, not merely  
18 speculative or hypothetical"). The complaint lacks any allegation that Plaintiff has suffered or  
19 reasonably fears suffering imminently any harm. The "imminent danger" exception is available  
20 "for genuine emergencies," where "time is pressing" and "a threat . . . is real and proximate." *Lewis*  
21 *v. Sullivan*, 279 F.3d 526, 531 (7th Cir. 2002). Plaintiff has presented no genuine emergency where  
22 time is pressing, nor a threat that is real and proximate.

23 In sum, the Court finds Plaintiff has suffered three or more strikes and was not under  
24 imminent danger of serious physical injury when he filed his complaint in this action. Therefore,  
25 Plaintiff should be precluded from proceeding IFP and be directed to pay the filing fee if he wishes  
26 to litigate the case. *Andrews*, 493 F.3d at 1052-53.<sup>2</sup>

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27 <sup>2</sup> In an earlier, unrelated action filed in the Central District of California, Plaintiff's  
28 complaint was dismissed because the court found Plaintiff was not entitled to proceed *in forma*

1 **IV. CONCLUSION AND RECOMMENDATION**

2 For the foregoing reasons, the Court **DIRECTS** the Clerk of the Court to assign a district  
3 judge to this action and **RECOMMENDS** that:

- 4 1. Plaintiff be precluded from proceeding IFP; and  
5 2. Plaintiff be ordered to pay the \$405.00 filing fee in full within 30 days.

6 These Findings and Recommendations will be submitted to the United States District Judge  
7 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days** after  
8 being served with a copy of these Findings and Recommendations, a party may file written  
9 objections with the Court. E.D. Cal. Local Rule 304(b). The document should be captioned,  
10 “Objections to Magistrate Judge’s Findings and Recommendations” and **shall not exceed 15 pages**  
11 without leave of Court and good cause shown. The Court will not consider exhibits attached to the  
12 Objections. To the extent a party wishes to refer to any exhibit(s), the party should reference the  
13 exhibit in the record by its CM/ECF document and page number, when possible, or otherwise  
14 reference the exhibit with specificity. Any pages filed in excess of the 15-page limitation may be  
15 disregarded by the District Judge when reviewing these Findings and Recommendations under 28  
16 U.S.C. § 636(b)(1)(C). A party’s failure to file any objections within the specified time may result  
17 in the waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)  
18 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

19 IT IS SO ORDERED.

20 Dated: **May 19, 2025**

21   
22 UNITED STATES MAGISTRATE JUDGE  
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28 *pauperis* given his three-strike status. See *Matthews v. North Cnty. Corr. Facility*, No. 2:22-cv-09417-RGK-AGR (C.D. Cal. Jan. 5, 2023), Doc. 4.